

The 12th April, 1974

No. 2960-4Lab-74/11353.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Mittal Industries, G. T. Road, Panipat:—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 28 of 1972

between

**SHRI MOHMAD YASSIN, WORKMAN AND THE MANAGEMENT OF M/S MITTAL
INDUSTRIES, G. T. ROAD, PANIPAT (KARNAL)**

Present :

Shri Harish Baghi, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

By order No. ID/KNL/114-A-72/14811, dated 19th April, 1972, of the Governor of Haryana the following dispute between the management of M/s Mittal Industries, G. T. Road, Panipat (Karnal) and its workman Shri Mohmad Yassin was referred for adjudication to this Tribunal in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the retrenchment of Shri Mohmad Yassin was justified and in order? If not, to what relief is he entitled?

Usual notices were given to the parties and they put in their respective written statements. The workman concerned reiterated his claim for reinstatement and payment of back wages, as earlier raised in the demand notice, dated 27th December, 1971, leading to the present reference, with the allegations that he had been illegally retrenched with effect from 26th November, 1971, without satisfying the requirements of section 25F of the Industrial Disputes Act, 1947. The management, on the other hand, raised the plea that as a matter of fact the factory had been closed in the month of April, 1971 and this workman had settled his account earlier and received payment of his full and final dues on 15th April, 1971 and as such no industrial dispute existed between the parties which could be referred for adjudication. The following issues arose for determination in the case from the above pleadings of the parties:—

- (1) Whether the management closed the industry in April, 1971 and it has not yet been re-started? If so, with what effect?
- (2) Whether Shri Mohd. Yassin concerned workman had himself abandoned the job held by him and therefore, it is not a case of his retrenchment by the management?
- (3) Whether the retrenchment of Shri Mohmad Yassin was justified and in order? If not, to what relief is he entitled?

The management has examined three witnesses including Shri Ram Sarup Batra, Clerk of the Factory Inspector, Panipat, M.W.1, Shri Raj Kumar, Clerk, Labour-cum-Conciliation Officer, Panipat, M.W.2, and Shri Radhey Sham Mittal, Sole Proprietor of the concern, M.W.3. M.W.1 has deposed that Shri S. S. Madan, Factories Inspector, Panipat, had visited the factory on 23rd November, 1971 and submitted his report copy Exhibit M.W.1/1 that the factory had since been closed and no work was going on. He has further proved the correspondence exchanged between the management and the authorities concerned with regard to the closure of the factory, copy Exhibit M.W. 1.2.

M.W. 2 Shri Raj Kumar has deposed that Mohmad Yassin concerned workman had filed an application under section 15(3) of the Payment of Wages Act which was returned to him,—*vide* order, dated 10th July, 1972, copy Exhibit M.W. 2/2. According to him the management had pleaded payment in full,—*vide* receipt Exhibit M.W. 2/3 and has further produced copies of the relevant entries from the attendance register, M.W. 2/4, Payment of Wages Register, M.W. 2/5, and a statement made by Shri Brij Mohan Gupta, M.W. 2/6. In cross-examination he has admitted some applications made by the workmen, Exhibit W. 1, W. 2, W. 3, W. 4, and in answer to the question put to him by the management in re-examination he has stated that copy Exhibit M.W. 2/7 is the reply filed by the management.

M. W. 3 Shri Radhey Sham Mittal, Proprietor, has deposed that Shri Mohmad Yassin had worked till 15th April, 1971 and had expressed his desire on that day to settle his account since the factory was running into loss and had been closed and after checking the records a sum of Rs 200 was paid to him in full and final settlement of his entire dues against receipt Ex. M. W. 2/3. He has further proved the relevant entries in the attendance register also. In cross-examination he has refuted the suggestion that the services of this workman were terminated with effect from 26th November, 1971. According to him he had left the service of his own accord and received payment of his full dues.

On the other hand the workman concerned has examined two witnesses, namely, Kharati Lal, W.W. 1. and Shri Sachdev Bhandari, W. W. 3, besides making his own statement as W. W. 2, W. W. 1 Shri Kharati Lal, Tea Stall Holder, has deposed that Shri Mohmad Yassin had an account with him till November, 1971, when his services were terminated by the management in October, 1971. In cross-examination he had admitted that in his account book Shri Mohmad Yassin had been shown as Foreman by which name he was generally known. According to the workman himself his services were terminated by the management without any charge-sheet or show-cause notice and inspite of his approach the management had not taken him back on duty nor had he been gainfully employed during the period of forced unemployment. He has further stated that the management used to dispute him for collection of amounts from the Wool Purchase Committee and he collected cheques worth Rs 6000 and 13000, from the said Committee. In cross-examination he has denied that the factory had been closed in April, 1971. With regard to the receipt Ex. M. W. 2/3 he has stated that his thumb-mark on the receipt might have been taken by the management without his knowledge. He has denied the suggestion that he was running a blacksmith shop at Panipat which according to him in fact belongs to his brother and he had nothing to do with it. M. W. 3 Shri Sachdev Bhandari of the Wool Purchase Committee Panipat, has stated that the signatures of Mohmad Yassin appeared on the counterfoils cheque No. PP-033795, dated the 11th November, 1971 and PP-033796, dated 18th November, 1971, which were given to him on behalf of M/s Bishan Sarup-Radhey Sham.

I have gone through the written arguments filed on behalf of the workman and have heard the learned representative of the management. A careful scrutiny of the evidence on record reveals beyond any shadow of doubt that the factory had been closed in the month of November, 1971, as is clear from the perusal of the report of the Factory Inspector, dated 23rd November, 1971 copy Ex. M. W. 1/1 and there is nothing on the record to indicate that the work in the factory had been restarted. The management has further succeeded in establishing that this workman had in fact settled his account on 15th November, 1971 and received payment of Rs 200 in full and final settlement of his entire claim against the management,—*vide* receipt, Exhibit M. W. 2/3, obviously on account of the closure of the factory. He could not have the courage to deny his thumb-mark on this receipt and his vague assertion that the management might have obtained his thumb-mark on a bogus receipt carries no weight. In the demand notice, dated 22nd December, 1971, leading to the present reference, he has mentioned that his services had been terminated by way of illegal retrenchment with effect from 26th November, 1971, which fact is belied by his own receipt Exhibit M. W. 2/3 referred to above, read with the other evidence in the case.

That disposes of issues Nos. 1 & 2 which for the reasons discussed above are decided in favour of the management and against the workman holding that as a matter of fact Shri Mohmad Yassin had himself abandoned service and received payment of his dues in full and final settlement of his entire claim obviously on account of the closure of the factory in April, 1971.

In view of my above findings on issue Nos. 1 and 2, issue No. 3 does not arise for consideration. The factory having since been closed and the workman having collected his dues in full and final settlement of his entire claim against the management, there was no question of his services having been terminated by the management by way of retrenchment or otherwise. Issue No. 3 is also decided accordingly against him. The reference in the result is answered against the workman holding that he is not entitled to any relief by way of reinstatement or payment of back wages. There shall, however be no order as to costs.

Dated 28th March, 1974.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 332, dated 29th March, 1974.

Forwarded (four copies) to the Secretary to Government, of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th March, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.